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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-811

13 **YELENA MARIE KOLODJI**
14 **aka YELENA K. SHAPIRO**
15 **20941 Nez Perce Trail**
16 **Los Gatos, CA 95033**

ACCUSATION

17 **Registered Nurse License No. 384979**
18 **Nurse Midwife Certificate No. 704**

Respondent.

19 Complainant alleges:

PARTIES

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about March 31, 1985, the Board of Registered Nursing issued Registered
24 Nurse License Number 384979 to Yelena Marie Kolodji, aka Yelena K. Shapiro ("Respondent").
25 The Registered Nurse License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on March 31, 2015, unless renewed.

27 3. On or about September 9, 1988, the Board of Registered Nursing issued Nurse
28 Midwife Certificate No. 704 to Respondent. The Nurse Midwife Certificate was in full force and

1 effect at all times relevant to the charges brought herein and will expire on March 31, 2015,
2 unless renewed.

3 JURISDICTION

4 4. This Accusation is brought before the Board of Registered Nursing ("Board"),
5 Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated.

7 5. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
8 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
9 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
10 Nursing Practice Act.

11 6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
12 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
13 licensee or to render a decision imposing discipline on the license.

14 7. Section 118, subdivision (b), of the Code provides that the
15 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
16 jurisdiction to proceed with a disciplinary action during the period within which the license may
17 be renewed, restored, reissued or reinstated.

18 RELEVANT DISCIPLINARY STATUTES AND REGULATIONS

19 8. Section 2761 of the Code states:

20 "The board may take disciplinary action against a certified or licensed nurse or deny an
21 application for a certificate or license for any of the following:

22 ...

23 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
24 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
25 Act] or regulations adopted pursuant to it.

26 ..."

27 9. Section 2762 of the Code [**Drug-related transgressions**] states:

28 In addition to other acts constituting unprofessional conduct within the meaning of this

chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

“(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, . . . any dangerous drug or dangerous device as defined in Section 4022.

10. Section 2725 of the Code [**Legislative intent; Practice of nursing defined**] states:

“(a) In amending this section at the 1973-74 session, the Legislature recognizes that nursing is a dynamic field, the practice of which is continually evolving to include sophisticated patient care activities. It is the intent of the Legislature in amending this section at the 1973-74 session to provide clear legal authority for functions and procedures that have common acceptance and usage. It is the legislative intent also to recognize the existence of overlapping functions between physicians and registered nurses and to permit additional sharing of functions within organized health care systems that provide for collaboration between physicians and registered nurses. These organized health care systems include, but are not limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians’ offices, and public or community health services.

“(b) The practice of nursing within the meaning of this chapter [The Nursing Practice Act] means those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill,

“(c) ‘Standardized procedures,’ as used in this section, means either of the following:

“(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses.

“(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which

1 is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of
2 Division 2 of the Health and Safety Code.

3 “The policies and protocols shall be subject to any guidelines for standardized procedures
4 that the Division of Licensing of the Medical Board of California and the Board of Registered
5 Nursing may jointly promulgate. If promulgated, the guidelines shall be administered by the
6 Board of Registered Nursing.

7 (d) Nothing in this section shall be construed to require approval of the standardized
8 procedures by the Division of Licensing of the Medical Board of California, or by the Board of
9 Registered Nursing.

10 “(e) No state agency other than the board may define or interpret the practice of nursing
11 for those licensed pursuant to the provisions of this chapter, or develop standardized procedures
12 or protocols pursuant to this chapter, unless so authorized by this chapter, or specifically required
13 under state or federal statute. “State agency” includes every state office, officer, department,
14 division, bureau, board, authority, and commission.

15 11. California Code of Regulations, title 16, section 1474 [**Standardized Procedure**
16 **Guidelines**] states:

17 “Following are the standardized procedure guidelines jointly promulgated by the Medical
18 Board of California and by the Board of Registered Nursing:

19 “(a) Standardized procedures shall include a written description of the method used in
20 developing and approving them and any revision thereof.

21 “(b) Each standardized procedure shall:

22 “(1) Be in writing, dated and signed by the organized health care system personnel
23 authorized to approve it.

24 “(2) Specify which standardized procedure functions registered nurses may perform and
25 under what circumstances.

26 “(3) State any specific requirements which are to be followed by registered nurses in
27 performing particular standardized procedure functions.

28 “(4) Specify any experience, training, and/or education requirements for performance of

1 standardized procedure functions.

2 “(5) Establish a method for initial and continuing evaluation of the competence of those
3 registered nurses authorized to perform standardized procedure functions.

4 “(6) Provide for a method of maintaining a written record of those persons authorized to
5 perform standardized procedure functions.

6 “(7) Specify the scope of supervision required of performance of standardized procedure
7 functions, for example, immediate supervision by a physician.

8 “(8) Set forth any specialized circumstances under which the registered nurse is to
9 immediately communicate with a patient’s physician concerning the patient’s condition.

10 “(9) State the limitations on settings, if any, in which standardized procedure functions
11 may be performed.

12 “(10) Specify patient record keeping requirements.

13 “(11) Provide for a method of periodic review of the standardized procedures.”

14 12. Section 2746.5 of the Code [**Authority conferred by (nurse-midwifery) certificate;**
15 **Required supervision**] states:

16 “(a) The certificate to practice nurse-midwifery authorizes the holder, under the
17 supervision of a licensed physician and surgeon, to attend cases of normal childbirth and to
18 provide prenatal, intrapartum, and post-partum care, including family-planning care, for the
19 mother, and immediate care for the newborn.

20 “(b) As used in this chapter, the practice of nurse-midwifery constitutes the furthering or
21 undertaking by any certified person, under the supervision of a licensed physician and surgeon
22 who has current practice or training in obstetrics, to assist a woman in childbirth so long as
23 progress meets criteria accepted as normal. All complication shall be referred to a physician
24 immediately. The practice if nurse-midwifery does not include the assisting of childbirth by any
25 artificial, forcible, or mechanical means, nor the performance of any version.

26 “(c) As used in this article, ‘supervision’ shall not be construed to require the physical
27 presence of the supervising physician.

28 “(d) A certified nurse-midwife is not authorized to practice medicine and surgery by the

provisions of this chapter.

...

13. Section 2746.51 of the Code [**When nurse-midwife may furnish drugs or devices**] states:

“(a) Neither this chapter nor any other provision of law shall be construed to prohibit a certified nurse-midwife from furnishing or ordering drugs or devices, . . . when all of the following apply:

...

“(2) The drugs or devices are furnished or ordered by a certified nurse-midwife in accordance with standardized procedures or protocols. For purposes of this section, standardized procedure means a document, including protocols, developed and approved by the supervising physician and surgeon, the certified nurse-midwife, and the facility administrator or his or her designee. The standardized procedure covering the furnishing or ordering of drugs or devices shall specify all of the following:

“(A) Which certified nurse-midwife may furnish or order drugs or devices.

“(B) Which drugs or devices may be furnished or ordered and under what circumstances.

“(C) The extent of physician and surgeon supervision.

“(D) The method of periodic review of the certified nurse-midwife’s competence, including peer review, and review of the provisions of the standardized procedure.

...

“(4) The furnishing or ordering of drugs or devices by a certified nurse-midwife occurs under physician and surgeon supervision. . . . Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include all of the following:

“(A) Collaboration on the development of the standardized procedure or protocol.

“(B) Approval of the standardized procedure or protocol.

“(C) Availability by telephonic contact at the time of patient examination by the certified nurse-midwife.

”
• • •

14. Section 2746.52 of the Code [**Authority to perform episiotomies and repair lacerations of perineum**] states:

“Notwithstanding Section 2746.5, the certificate to practice nurse-midwifery authorizes the holder to perform and repair episiotomies, and to repair first-degree and second-degree lacerations of the perineum, in a licensed acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, and a licensed alternative birth center, as defined in paragraph (4) of subdivision (b) of Section 1204 of the Health and Safety Code, but only if all of the following conditions are met:

“(a) The supervising physician and surgeon and any backup physician and surgeon is credentialed to perform obstetrical care in the facility.

“(b) The episiotomies are performed pursuant to protocols developed and approved by all of the following:

“(1) The supervising physician and surgeon.

“(2) The certified nurse-midwife.

“(3) The director of the obstetrics department or the director of the family practice department, or both, if a physician and surgeon in the obstetrics department or the family practice department is a supervising physician and surgeon, or an equivalent person if there is no specifically identified obstetrics department or family practice department.

“(4) The interdisciplinary practices committee, if applicable.

“(c) The protocols, and the procedures which shall be developed pursuant to the protocols, shall relate to the performance and repair of episiotomies and the repair of first-degree and second-degree lacerations of the perineum, and shall do all of the following:

“(1) Ensure that all complications are referred to a physician and surgeon immediately.

“(2) Ensure immediate care of patient who are in need of care beyond the scope of practice of the certified nurse midwife, or emergency care for times when the supervising

1 physician and surgeon is not on the premises.

2 “(3) Establish the number of certified nurse-midwives that a supervising physician and
3 surgeon may supervise.”

4 15. Section 2726 of the Code [**Unauthorized practice**] states:

5 “Except as otherwise provided herein, this chapter confers no authority to practice medicine
6 or surgery.”

7 COST RECOVERY

8 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
12 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
13 included in a stipulated settlement.

14 DRUGS

15 17. Aquamephyton is a man-made form of Vitamin K, a medication that can be
16 administered orally or by way of injection to a newborn as a prophylactic to prevent bleeding
17 problems. It is available only by prescription and is classified as a dangerous drug pursuant to
18 Business and Professions Code section 4022.

19 18. Erythromycin ophthalmic ointment is an antibiotic used to treat and/or prevent eye
20 infections including those contracted by a newborn infant. It is available only by prescription and
21 is classified as a dangerous drug pursuant to Business and Professions Code section 4022.

22 19. Lidocaine is the generic name for Xylocaine. It is an anesthetic drug that can be
23 administered by injection to numb an area of the body. As an injection, it is available only by
24 prescription and is classified as a dangerous drug pursuant to Business and Professions Code
25 section 4022.

26 20. Methergine is a semi-synthetic ergot alkaloid used for the prevention and control of
27 postpartum hemorrhage. The medication is available only by prescription and is classified as a
28 dangerous drug pursuant to Business and Professions Code section 4022.

21. Pitocin is the trade name for Oxytocin. The medication is available only by prescription and is used to stimulate labor contractions and/or to control uterine bleeding after delivery. It is classified as a dangerous drug pursuant to Business and Professions Code section 4022.

22. RhoGam is an injection given to women who are Rh negative to prevent the formation of antibodies to Rh positive blood. It is given during the course of prenatal care and as indicated within 72 hours post delivery. It is available only by prescription and is classified as a dangerous drug pursuant to Business and Professions Code section 4022.

STATEMENT OF FACTS

23. On or about October 9, 2008, Patient K.J. (“K.J.”), pregnant with her second child, contacted Respondent as she wanted a home delivery. Due to a full home birth practice, Respondent referred K.J. to her nurse-midwife colleague, Kavita Noble (“Noble”). Respondent and Noble had known one another since 1998, and they would often provide back-up home birth services for each other in Santa Clara County.

24. On or about November 18, 2008, Noble assumed the care of K.J. On December 25, 2008, K.J. went into labor. Noble arrived at her home in Mountain View, California, at approximately 5:00 p.m., and determined that she was in active labor. Because Noble had another patient in labor, she called Respondent and asked her to provide back-up care until she was able to return to K.J.'s residence.

25. Respondent arrived at K.J.'s home at approximately 6:00 p.m., and assumed her labor management. Two hours later, at approximately 8:00 p.m., Noble returned and took over K.J.'s care, with delivery of a male infant at 9:15 p.m. Respondent stayed and assisted in K.J.'s delivery and postpartum care as well as in providing newborn care to her infant.

26. Respondent was not practicing under the supervision of a licensed physician and surgeon during the time that she provided intrapartum care to K.J.

27. Respondent was not practicing under standardized procedures during the time that she provided intrapartum care to K.J.

28. Since 1998, Respondent has operated a home birth practice based in Los Gatos,

1 California, providing prenatal intrapartum, postpartum care and treatment to approximately 1500
2 women and newborn care to their infants. Respondent's home birth practice also includes, but is
3 not limited to the repair of perineal lacerations with as needed administration of Lidocaine by
4 injection, administration to a newborn of Aquamephyton orally or intramuscularly and
5 Erythromycin ophthalmic ointment. Respondent's practice also includes the administration of
6 Pitocin and/or Methergine intramuscularly to women for indications of postpartum uterine atony,
7 and an injection of RhoGam 72 hours post delivery for Rh negative women as indicated.

8 29. Since 1998, Respondent has operated a home birth practice providing prenatal,
9 intrapartum and postpartum care and treatment to women and newborn care to their infants
10 without the supervision of a licensed physician and surgeon and/or without standardized
11 procedures.

12 FIRST CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct - Intrapartum Care of K.J. Without Physician Supervision)

14 30. Respondent is subject to disciplinary action for violation of the Nurse Practice Act
15 pursuant to Code section 2761, subdivision (d), as defined in section 2746.5, in that she provided
16 intrapartum care to K.J. on December 25, 2008, without being supervised by a licensed physician
17 and surgeon. The facts in support of this cause for discipline are set forth above in paragraphs 23
18 through 26.

19 SECOND CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct - Intrapartum Care of K.J. Without Standardized Procedures)

21 31. Respondent is subject to disciplinary action for violation of the Nurse Practice Act
22 pursuant to Code section 2761, subdivision (d), as defined in section 2725, subdivisions (c) and
23 (e), and California Code of Regulations, title 16, section 1474, in that she provided intrapartum
24 care to K.J., on December 25, 2008, without standardized procedures. The facts in support of
25 this cause for discipline are set forth above in paragraphs 23 through 27.

26 ///

27 ///

28 ///

1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Practice of Medicine Without a License in
3 Delivery of Care to K.J.)

4 32. Respondent is subject to disciplinary action for violation of the Nurse Practice Act
5 pursuant to Code sections 2761, subdivision (d), 2746.5, subdivision (d) and 2726, in that her
6 provision of intrapartum care to K.J. on December 25, 2008, without physician supervision
7 and/or without standardized procedures constituted practicing medicine without a license. The
8 facts in support of this cause for discipline are set forth above in paragraphs 23 through 27.

9 FOURTH CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct - Home Birth Practice Without Physician Supervision)

11 33. Respondent is subject to disciplinary action for violation of the Nurse Practice Act
12 pursuant to Code section 2761, subdivision (d), as defined in section 2746.5, 2746.51, and
13 2746.52, in that since 1998, she has provided prenatal, intrapartum and postpartum care to women
14 and newborn care to their infants without being supervised by a licensed physician and surgeon.
15 The facts in support of this cause for discipline are set forth above in paragraphs 23 thorough 29.

16 FIFTH CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct - Home Birth Practice Without Standardized Protocols)

18 34. Respondent is subject to disciplinary action for violation of the Nurse Practice Act
19 pursuant to Code section 2761, subdivision (d), as defined in section 2725, subdivisions (c) and
20 (e), 2746.51, 2746.52, and California Code of Regulations, title 16, section 1474, in that since
21 1998, she has provided prenatal, intrapartum and postpartum care to women and newborn care to
22 their infants without standardized procedures. The facts in support of this cause for discipline are
23 set forth above in paragraph 23 through 29.

24 SIXTH CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct – Furnishing/Administering Dangerous Drugs)

26 35. Respondent is subject to disciplinary action under Code section 2762, subdivision (a),
27 in that since 1998 in her home birth practice, she has furnished and/or administered dangerous
28 drugs to women and/or their infants. The facts in support of this cause for discipline are set forth

1 above in paragraphs 28 and 29.

2 SEVENTH CAUSE FOR DISCIPLINE

3 (Practice of Medicine Without a License Since 1998)

4 36. Respondent is subject to disciplinary action for violation of the Nurse Practice Act
5 pursuant to Code sections 2761, subdivision (d), 2746.5, subdivision (d) and 2726, in that since
6 1998, she has provided prenatal, intrapartum and postpartum care to women and newborn care to
7 their infants without physician supervision and without standardized procedures. The facts in
8 support of this cause for discipline are set forth above in paragraphs 23 through 29.

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Registered Nursing issue a decision:

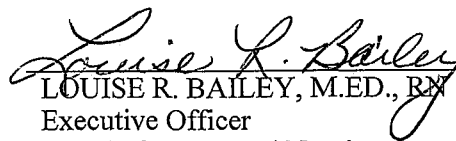
12 1. Revoking or suspending Registered Nurse License No. 384979, issued to Yelena
13 Marie Kolodji, aka Yelena K. Shapiro;

14 2. Revoking or suspending Nurse Midwife Certificate No. 704, issued to Yelena Marie
15 Kolodji, aka Yelena K. Shapiro;

16 3. Ordering Yelena Marie Kolodji, aka Yelena K. Shapiro to pay the Board of Registered
17 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
18 Business and Professions Code section 125.3; and

19 4. Taking such other and further action as deemed necessary and proper.

20 DATED: March 20, 2013

21 
22 LOUISE R. BAILEY, M.ED., RN
23 Executive Officer
24 Board of Registered Nursing
25 Department of Consumer Affairs
26 State of California
27 Complainant

28 SF2012403411